Supreme Court, U.S.
FILED
APR 25 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1841

JULIUS T. CUYLER, MILTON SHAPP,

Petitioners,

vs.

JOHN ADAMS,

Respondent.

APPEAL FROM THE JUDGMENT OF
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR PETITIONERS

MARIA PARISI VICKERS,
Deputy Attorney General,
Chief, Civil Litigation

JOHN O. J. SHELLENBERGER,
Deputy Attorney General,
Eastern Regional Director

EDWARD G. BIESTER, JR.,
Attorney General

Pennsylvania Department of Justice,
206 State Office Building,
Philadelphia, Pennsylvania 19130
(215) 238-6661

Pennsylvania Appellate Printing Co.—Call Toll Free—1(800) 526-7560

TABLE OF CONTENTS

Opinions Below 1

Jurisdiction 2

Constitutional and Statutory Provisions Involved 2

Statutes Involved 3

Statement of the Case 29

A. Facts and Proceedings 29

B. Statutory Scheme 31

ARGUMENT:

I. The Court of Appeals for the Third Circuit erred in the statutory construction of Article IV of the Interstate Agreement on Detainers when it held that prisoners transferred from one state to another for trial on criminal charges must be given a hearing as provided in the Uniform Extradition Act ... 38

A. The Court of Appeal's interpretation of Article IV goes against the clear and literal meaning of the statute 38

B. The Court of Appeal's reliance on Legislative history is misplaced since the statutory language is unambiguous and its literal interpretation effectuates the purpose of the statute 42

C. The Court of Appeals erroneously relied on the provisions of a general statute to defeat the controlling provisions of a specific statute 44

D. The effects of the decision of the Court of Appeals are clearly contrary to the purpose of both the Extradition Act and the Agreement 46

TABLE OF CONTENTS

II. The interstate transfer of a sentenced prisoner pursuant to the provisions of the Interstate Agreement on Detainers does not infringe upon any interest protected by the due process clause of the Fourteenth Amendment 47

A. Respondent does not have any constitutionally protected extradition rights 48

B. The Interstate transfer of a prisoner does not infringe a "liberty" interest protected by the due process clause 49

III. The Interstate transfer of a sentenced prisoner pursuant to the provisions of the Interstate Agreement on Detainers rather than the Uniform Criminal Extradition Act does not violate the equal protection clause of the Fourteenth Amendment 52

A. The protection of procedural rights are substantially similar under both the Extradition Act and the Agreement 53

B. Differences in the procedure under the Extradition Act and the Agreement are rationally based 55

Conclusion 58

CASES CITED:

Atkinson v. Hanberry,
589 F.2d 917 (5th Cir. 1979) 39, 52

Commonwealth ex rel. Coleman v. Cuyler,
396 A.2d 394 (1978) 53, 56

Frisbie v. Collins,
342 U.S. 519 (1952) 30, 49

TABLE OF CONTENTS

CASES CITED:

Ginsberg & Sons v. Popkin,
285 U.S. 204 (1932) 45

Hagans v. Lavine,
415 U.S. 528 (1974) 55

Hystad v. Rhay,
12 Wash. App. 872, 533 P.2d 409 (1975) 56

Lascelles v. Georgia,
148 U.S. 537 (1893) 48

McQueen v. Wyrick,
543 S.W.2d 778 (1976) 57

Meachum v. Fano,
427 U.S. 215 (1976) 30, 49, 50, 51, 52

Michigan v. Doran,
— U.S. —, 99 S. Ct. 530 (1978) 33

Moen v. Wilson,
189 Colo. 85, 536 P.2d 1129 (1975) 57

Montanye v. Haymes,
427 U.S. 236 (1976) 49, 50, 51

Montclair v. Ramsdell,
107 U.S. 147 (1883) 39-40

Munsey v. Clough,
196 U.S. 364 (1905) 49

Pettibone v. Nichols,
203 U.S. 192 (1906) 49

Ponzi v. Fessenden,
258 U.S. 254 (1922) 49

TABLE OF CONTENTS

CASES CITED:

Preiser v. Rodriguez,
411 U.S. 475 (1973) 45

Simpson v. United States,
435 U.S. 6 (1978) 45

Sisbarro v. Warden, Mass. State Penitentiary,
592 F.2d 1 (1st Cir. 1979) 51, 52

State v. Thompson,
133 N.J. Super. 180, 336 A.2d 11 (1975) 39, 56

State ex rel. Garner v. Gray,
55 Wis.2d 574, 201 N.W.2d 163 (1972) 57

Terlinden v. Ames,
184 U.S. 270 (1902) 41

United States v. American Trucking Association, Inc.,
310 U.S. 534 (1940) 43

United States v. Ford,
550 F.2d 732 (2d Cir. 1977) 35

United States v. Mauro,
— U.S. —; 98 S. Ct. 1834 (1978) 35, 57

United States v. Oregon,
366 U.S. 643 (1961) 42-43

United States v. Public Utilities Commission
of California,
345 U.S. 295 (1953) 43

Wertheimer v. State,
294 Minn. 293, 201 N.W.2d 383 (1972) ... 54, 55, 57

TABLE OF CONTENTS

CONSTITUTION AND STATUTES:

United States Constitution, Article IV, Section 2, Clause 2 ..... 2, 31

United States Constitution, Amendment XIV, Section 1 ..... 2, 52

18 U.S.C.A. App. (1976) 51

18 U.S.C. 3182 32

42 U.S.C. Secs. 1981, 1983 ..... 29, 45

28 U.S.C. Secs. 1332, 1343 29

28 U.S.C. Section 1254(1), Section 2101(c) 2

Interstate Agreement on Detainers, Pa. Stat. Ann. tit. 19, Secs. 1431 et seq. (Purdon 1964) 3, 35, 52

Article I 3, 35, 43

Article III 4, 36, 40

Article IV 7, 29, 31, 36, 37, 38, 39, 40, 41

Uniform Criminal Extradition Act, Pa. Stat. Ann. tit. 19, Secs. 191.1 et seq. (Purdon 1964 & Supp. 1978) 13, 14, 30, 38, 52

Section 2 ..... 14, 32, 33

Section 3 ..... 15, 32

Section 4 ..... 15, 32

Section 5 ..... 16, 33, 44, 52

Section 7 ..... 17, 33

TABLE OF CONTENTS

CONSTITUTION AND STATUTES:

Section 10 ..... 18, 31, 33, 38

Section 19 ..... 23, 34

MISCELLANEOUS:

Council of State Governments *Suggested State Legislation, Program for 1957*, 78-79 (1956) 41

Council of State Governments, *Handbook on Interstate Crime Control*, 91-116 (rev. ed. 1966) 42, 48

R. Singer and W. Statsky, *Rights of the Imprisoned*, 825 (1974) 34

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 78-1841

JULIUS T. CUYLER, MILTON SHAPP,

Petitioners,

vs.

JOHN ADAMS,

Respondent.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit, reversing the opinion of the United States District Court, is reported at 592 F.2d 720 (3d Cir. 1979) and is set forth as Appendix A in the Petition for Writ of Certiorari, p. 1a-13a.

The opinion of the United States District Court is reported at 441 F. Supp. 556 (E.D. Pa. 1977) and is set forth as Appendix B in the Petition for Writ of Certiorari, p. 14a-19a.

JURISDICTION

The judgment of the United States Court of Appeals was entered on February 9, 1979. Petitioners' prayer for enlargement of time granted petitioners until June 9, 1979 to file a petition for writ of certiorari, at which time the petition was filed. Certiorari was granted on February 19, 1980. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1), and Section 2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions

United States Constitution,
Article IV Section 2, Clause 2.
Extradition

A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

United States Constitution,
Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES INVOLVED

Interstate Agreement on Detainers, Pa. Stat. Ann. tit. 19 Sections 1431-1438 (Purdon 1964)

Uniform Criminal Extradition Act, Pa. Stat. Ann. tit. 19 Sections 191.1 *et seq.* (Purdon 1964 & Supp. 1978)

CHAPTER 18.—DETAINERS

Sec.
1431. Agreement and procedure.
1432. Appropriate court.
1433. Enforcement and cooperation.
1434. Second and subsequent offenses.
1435. Escape.
1436. Duty of warden or other official.
1437. Administrator and information agent.
1438. Copies of act.

§1431. AGREEMENT AND PROCEDURE

The Agreement on Detainers is hereby enacted into law and entered into by this Commonwealth with all other jurisdictions legally joining therein in the form substantially as follows:

Agreement on Detainers

The contracting states solemnly agree that:

Article I.

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions,

produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedure. It is the further purpose of this agreement to provide such cooperative procedures.

Article II.

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III. hereof or at the time that a request for custody or availability is initiated pursuant to article IV. hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to article III. or article IV. hereof.

Article III.

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the

term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: Provided, That for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certificated mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purpose of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this

paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV.

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V. (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: Provided, That the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: And provided further, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the

receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V. (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V.

(a) In response to a request made under article III. or article IV. hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient

prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III. of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III. or article IV. hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order, dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which

form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting presecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being held [1] shall be responsible for the prisoner

1. Enrolled bill reads "had."

and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI.

(a) In determining the duration and expiration dates of the time periods provided in article III. and IV. of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article VII.

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII.

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX.

This agreement shall be liberally construed so as to effectuate its purpose. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. 1959, Sept. 8, P.L. 829, No. 324, §1.

§1432. APPROPRIATE COURT

The phrase "appropriate court" as used in the Agreement on Detainers shall, with reference to the courts of this Commonwealth, mean any criminal court or any court having jurisdiction over indictable offenses. 1959, Sept. 8, P.L. 829, No. 324, §2.

UNIFORM CRIMINAL EXTRADITION ACT

Sec.

191.1 Definitions.
191.2 Fugitives from justice; duty of governor.
191.3 Form of demand.
191.4 Governor may investigate case.
191.5 Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion.
191.6 Extradition of persons not present in demanding state at time of commission of crime.
191.7 Issue of governor's warrant of arrest; its recitals.
191.8 Manner and place of execution.
191.9 Authority of arresting officer.
191.10 Rights of accused person; application for writ of habeas corpus.
191.11 Penalty for noncompliance with preceding section.
191.12 Confinement in jail; when necessary.
191.13 Arrest prior to requisition.
191.14 Arrest without a warrant.
191.15 Commitment to await requisition; bail.
191.16 Bail in what cases; conditions of bond.
191.17 Extension of time of commitment; adjournment.
191.18 Forfeiture of bail.
191.19 Persons under criminal prosecution in this state at time of requisition.
191.20 Guilt or innocence of accused; when inquired into.
191.21 Governor may recall warrant or issue alias.
191.22 Fugitives from this state; duty of governor.
191.23 Application for issuance of requisition; by whom made; contents.
191.24 Costs and expenses.

191.25 Immunity from service of process in certain civil actions.
191.26 Written waiver of extradition proceedings.
191.27 Non-waiver by this state.
191.28 No right of asylum; no immunity from other criminal prosecutions while in this state.
191.29 Interpretation.
191.30 Constitutionality.
191.31 Short title.

§191.1 DEFINITIONS

Where appearing in this act the term "Governor" includes any person performing the functions of governor by authority of the law of this State. The term "executive authority" includes the Governor and any person performing the functions of governor in a state other than this State. The term "state", referring to a state other than this State, includes any other state or territory, organized or unorganized, of the United States of America. 1941, July 8, P.L. 288, §1.

§191.2 FUGITIVES FROM JUSTICE; DUTY OF GOVERNOR

Subject to the provisions of this act, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this State to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this State. 1941, July 8, P.L. 288, §2.

§191.3 FORM OF DEMAND

No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing, alleging, except in cases arising under section 6,[1] that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state, and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand. 1941, July 8, P.L. 288, §3.

1. Section 191.6 of this title.

§191.4 GOVERNOR MAY INVESTIGATE CASE

When a demand shall be made upon the Governor of this State by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney General or any prosecuting officer in this State to investigate or assist in investigating the demand and to report to him the situa-

tion and circumstances of the person so demanded and whether he ought to be surrendered. 1941, July 8, P.L. 288, §4.

§191.5 EXTRADITION OF PERSONS IMPRISONED OR AWAITING TRIAL IN ANOTHER STATE OR WHO HAVE LEFT THE DEMANDING STATE UNDER COMPULSION

When it is desired to have returned to this State a person charged in this State with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor of this State may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this State as soon as the prosecution in this State is terminated.

The Governor of this State may also surrender on demand of the executive authority of any other state any person in this State who is charged, in the manner provided in section 23 of this act,[1] with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily. 1941, July 8, P.L. 288, §5.

1. Section 191.23 of this title.

§191.6 EXTRADITION OF PERSONS NOT PRESENT IN DEMANDING STATE AT TIME OF COMMISSION OF CRIME

The Governor of this State may also surrender on demand of the executive authority of any other state any person in this State charged in such other state in the

manner provided in section 3[1] with committing an act in this State or in a third state intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent shall apply to such cases even though the accused was not in that state at the time of the commission of the crime and has not fled therefrom. 1941, July 8, P.L. 288, §6.

1. Section 191.3 of this title.

§191.7 ISSUE OF GOVERNOR'S WARRANT OF ARREST; ITS RECITALS

If the Governor decides that the demand should be complied with he shall sign a warrant of arrest which shall be sealed with the State seal and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. 1941, July 8, P.L. 288, §7.

§191.8 MANNER AND PLACE OF EXECUTION

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the State to command the aid of all peace officers or other persons in the execution of the warrant and to deliver the accused, subject to the provisions of this act, to the duly authorized agent of the demanding state. 1941, July 8, P.L. 288, §8.

§191.9 AUTHORITY OF ARRESTING OFFICER

Every such peace officer or other person empowered to make the arrest shall have the same authority in ar-

resting the accused to command assistance therein as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance. 1941, July 8, P.L. 288, §9.

§191.10 RIGHTS OF ACCUSED PERSON; APPLICATION FOR WRIT OF HABEAS CORPUS

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this State who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel, and, if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody and to the said agent of the demanding state. 1941, July 8, P.L. 288, §10.

§191.11 PENALTY FOR NONCOMPLIANCE WITH PRECEDING SECTION

Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the Governor's warrant in willful disobedience to the last section shall be guilty of a misdemeanor, and, on conviction, shall be fined not more than $1,000.00, or be

imprisoned not more than six months, or both. 1941, July 8, P.L. 288, §11.

§191.12 CONFINEMENT IN JAIL; WHEN NECESSARY

The officer or persons executing the Governor's warrant of arrest or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city or borough through which he may pass, and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this State with such a prisoner for the purpose of immediately returning such prisoner to the demanding state, may, when necessary, confine the prisoner in the jail of any county or city or borough through which he may pass, and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping: Provided, however, That such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this State. 1941, July 8, P.L. 288, §12.

§191.13 ARREST PRIOR TO REQUISITION

Whenever any person within this State shall be charged on the oath of any credible person before any judge or magistrate of this State with the commission of any crime in any other state, and, except in cases arising under section 6,[1] with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this State, setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 6,[1] has fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation or parole and is believed to be in this State, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein wherever he may be found in this State and to bring him before the same or any other judge, magistrate or court who or which may be available in, or convenient of, access to the place where the arrest may be made to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. 1941, July 8, P.L. 288, §13.

1. Section 191.6 of this title.

§191.14 ARREST WITHOUT A WARRANT

The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant

upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed, and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section,[1] and thereafter his answer shall be heard as if he had been arrested on a warrant. 1941, July 8, P.L. 288, §14.

1. Section 191.13 of this title.

§191.15 COMMITMENT TO AWAIT REQUISITION; BAIL

If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, and, except in cases arising under section 6,[1] that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time, not exceeding thirty days, and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense unless the accused give bail as provided in the next section,[2] or until he shall be legally discharged. 1941, July 8, P.L. 288, §15.

1. Section 191.6 of this title.
2. Section 191.16 of this title.

§191.16 BAIL IN WHAT CASES; CONDITIONS OF BOND

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life

imprisonment under the laws of the state in which it was committed, a judge or magistrate in this State may admit the person arrested to bail by bond with sufficient sureties and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond and for his surrender to be arrested upon the warrant of the Governor of this State. 1941, July 8, P.L. 288, §16.

§191.17 EXTENSION OF TIME OF COMMITMENT; ADJOURNMENT

If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period, not to exceed sixty days, or a judge or magistrate may again take bail for his appearance and surrender, as provided in section 16,[1] but within a period not to exceed sixty days after the date of such new bond. 1941, July 8, P.L. 288, §17.

1. Section 191.16 of this title.

§191.18 FORFEITURE OF BAIL

If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate by proper order shall declare the bond forfeited and order his immediate arrest without warrant if he be within this State. Recovery may be had on such bond in the name of the State as in the case of other bonds given by the accused in criminal proceedings [1] within this State. 1941, July 8, P.L. 288, §18.

1. Enrolled bill reads "proceedings."

§191.19 PERSONS UNDER CRIMINAL PROSECUTION IN THIS STATE AT TIME OF REQUISITION

If a criminal prosecution has been instituted against such person under the laws of this State and is still pending, the Governor in his discretion either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this State. 1941, July 8, P.L. 288, §19.

§191.20 GUILT OR INNOCENCE OF ACCUSED; WHEN INQUIRED INTO

The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor, or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime. 1941, July, 8, P.L. 288, §20.

§191.21 GOVERNOR MAY RECALL WARRANT OR ISSUE ALIAS

The Governor may recall his warrant of arrest or may issue another warrant whenever he deems proper. 1941, July 8, P.L. 288, §21.

§191.22 FUGITIVES FROM THIS STATE; DUTY OF GOVERNOR

Whenever the Governor of this State shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or

parole in this State, from the executive authority of any other state, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this State to some agent commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this State in which the offense was committed. 1941, July 8, P.L. 288, §22.

§191.23 APPLICATION FOR ISSUANCE OF REQUISITION; BY WHOM MADE; CONTENTS

I. When the return to this State of a person charged with crime in this State is required the prosecuting attorney shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this State for trial, and that the proceeding is not instituted to enforce a private claim.

II. When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board or the warden of the institution or sheriff of the county from which escape was made shall present to the Governor a written application for a requisition for the return of such person in which application shall be stated the name of the

person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

III. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction, or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application with the action of the Governor indicated by endorsement thereon and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction, or of the sentence, shall be filed in the office of the Secretary of the Commonwealth to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition. 1941, July 8, P.L. 288, §23.

§191.24 COSTS AND EXPENSES

All costs and expenses shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. 1941, July 8, P.L. 288, §24.

§191.25 IMMUNITY FROM SERVICE OF PROCESS IN CERTAIN CIVIL ACTIONS

A person brought into this State by or after waiver of extradition based on a criminal charge shall not be subject

to service of personal process in civil actions arising out of the same facts as the criminal proceedings, to answer which he is being or has been returned, until he has been convicted in the criminal proceeding or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited. 1941, July 8, P.L. 288, §25.

§191.26 WRITTEN WAIVER OF EXTRADITION PROCEEDINGS

Any person arrested in this State charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 7 and 8[1] and all other procedure incidental to extradition proceedings by executing or subscribing in the presence of a judge of any court of record within this State a writing which states that he consents to return to the demanding state: Provided, however, That before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of *habeas corpus,* as provided in section 10.[2]

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the Governor of this State and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: Provided,

1. Sections 191.7 and 191.8 of this title.
2. Section 191.10 of this title.

however, That nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this State. 1941, July 8, P.L. 288, §26.

§191.27 NON-WAIVER BY THIS STATE

Nothing in this act contained shall be deemed to constitute a waiver by this State of its right, power or privilege to try such demanded person for crime committed within this State or of its right, power or privilege to regain custody of such person by extradition proceedings, or otherwise, for the purpose of trial, sentence or punishment for any crime committed within this State, nor shall any proceedings had under this act which result in or fail to result in extradition be deemed a waiver by this State of any of its rights, privileges or jurisdiction in any way whatsoever. 1941, July 8, P.L. 288, §27.

§191.28 NO RIGHT OF ASYLUM; NO IMMUNITY FROM OTHER CRIMINAL PROSECUTIONS WHILE IN THIS STATE

After a person has been brought back to this State by or after waiver of extradition proceedings he may be tried in this State for other crimes which he may be charged with having committed here, as well as that specified in the requisition for his extradition. 1941, July 8, P.L. 288, §28.

§191.29 INTERPRETATION

The provisions of this act shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it. 1941, July 8, P.L. 288, §29.

§191.30 CONSTITUTIONALITY

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisons or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. 1941, July 8, P.L. 288, §30.

§191.31 SHORT TITLE

This act may be cited as the Uniform Criminal Extradition Act. 1941, July 8, P.L. 288, §32.

STATEMENT OF THE CASE

A. *Facts and Proceedings*

In June, 1977, respondent, an inmate at the State Correctional Institution at Grateford, Pennsylvania, filed a *pro se* Complaint in the United States District Court for Eastern Pennsylvania on behalf of himself and others similarly situated seeking declaratory and injunctive relief as well as monetary damages under the Civil Rights Act, 42 U.S.C. Secs. 1981, 1983 and its jurisdictional counterpart, 28 U.S.C. Secs. 1332, 1343.[1]

The Complaint named petitioners and New Jersey state officials as defendants.[2] It challenged, on constitutional grounds, respondent's proposed transfer to a New Jersey state prison pursuant to a request for temporary custody made under Article IV of the Interstate Agreement on Detainers, Pa. Stat. Ann. tit. 19, Secs. 1431 *et seq.* (Purdon 1964) p. 3 *supra* (hereinafter Agreement).[3]

Specifically, the Complaint stated that on May 3, 1977 respondent was provided with a copy of a request for temporary custody, however, he was not informed of any of his constitutional rights, among them his right to petition the governor of the sending state to disapprove the request (A15a). It alleged further that respondent and all inmates in Pennsylvania prisons were being transferred to

---

1. While the Complaint sought class maintenance, the class was never certified (A13, A2-3).

2. Petitioner Cuyler is the Superintendent of a Pennsylvania state prison, petitioner Shapp is the former Governor of Pennsylvania. New Jersey defendants, among them a prosecutor, did not file a responsive pleading in District Court and did not participate in the proceedings in the Court of Appeals.

3. Respondent was wanted by the New Jersey authorities for trial on armed robbery and other charges (A47).

receiving states pursuant to the Agreement rather than the Uniform Criminal Extradition Act, Pa. Stat. Ann. tit. 19 Secs. 191.1 *et seq.* (Purdon 1964 & Supp. 1978) p. 13 *supra*, (hereinafter Extradition Act) therefore being denied a pre-transfer hearing provided by the Extradition Act (A15a, A16a). The Complaint also alleged that the New Jersey prosecutor had deliberately refrained from lodging the detainer until May 3, 1977, three months after the death of respondent's mother who was his alibi witness for the criminal charges set forth in the request for temporary custody (A17a, A18a).

Respondent premised his challenge to the interstate transfer on two theories: first, he asserted that the failure to advise the inmate of his right to petition the governor of the sending state for review of the custody request, and the absence of any pre-transfer hearing provisions constituted a violation of the Due Process Clause of the Fourteenth Amendment; second, he asserted that the failure to apply the pre-transfer hearing requirements of the Extradition Act to transfers made pursuant to Article IV of the Agreement deprived him of the equal protection of the law guaranteed by the Fourteenth Amendment.

An Answer on behalf of petitioners was filed on September 15, 1977 (A48). On October 21, 1977, the District Court filed a Memorandum of Decision and Order dismissing the Complaint for failure to state a claim upon which relief could be granted, and rejecting respondent's constitutional claims. Relying on *Frisbie v. Collins*, 342 U.S. 519 (1952), and *Meachum v. Fano*, 427 U.S. 215 (1976), the District Court held that respondent was not entitled to a pre-transfer hearing or to notice of the opportunity to petition the governor (Pet. A15a-A17a). The District Court further concluded that the state may con-

stitutionally distinguish between the transfer of an incarcerated individual pursuant to the Agreement and the extradition of a person otherwise at large transferred pursuant to the Extradition Act (*Id.* at A17a-A18a).[4]

Respondent appealed to the United States Court of Appeals for the Third Circuit. That Court found it unnecessary to reach the constitutional issues raised. Instead, the Court held, as a matter of statutory construction, that Article IV(d) of the Agreement preserves a prisoner's existing procedural rights under Section 10 of the Extradition Act (Pet. A7a, A13a). The Court of Appeals therefore vacated the order of the District Court and remanded for further proceedings consistent with the opinion (Pet. A13a).

B. *Statutory Scheme*

The interstate transfer of individuals charged with crimes in sister states is so fundamental that it is treated in Article IV, Section 2, Clause 2 of the United States Constitution which provides that:

---

4. Although in its opinion of October 21, 1977 (Pet. A14a) the District Court assumed that respondent had already been transferred to New Jersey, records now available to the parties show that he was not, in fact, transferred until January, 1978. In July, 1977, Mr. Adams, then represented by a public defender filed a Petition for a Writ of Prohibition in state court, seeking to enjoin petitioner Cuyler from transferring him without benefit of an Extradition Act hearing. On September 26, 1977, a judge of the state court ordered petitioner Cuyler to refrain from transferring Mr. Adams to New Jersey authorities. On December 21, 1977, another judge of the same court entered an order by agreement of counsel directing that the order of September 26, 1977 be vacated and authorizing petitioner Cuyler to release Mr. Adams to the New Jersey authorities under the terms of the Agreement. Present counsel for both petitioners and respondent were unaware of the state court proceedings until April 15, 1980.

> A person charged in any State with Treason, Felony or other Crime, who shall flee from Justice and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the Crime.

Effectuation of this constitutional mandate is assured by the Federal Extradition Statute, 18 U.S.C. Sec. 3182 which provides the minimum prerequisites for delivery of a fugitive by an asylum state to the demanding state. Most states have implemented more specific legislation such as the Uniform Criminal Extradition Act, which was enacted in Pennsylvania in 1941.[5]

The Extradition Act provides a detailed procedure to be followed in transferring individuals sought for trial by another state. Section 2 provides that the Governor of Pennsylvania shall deliver to the agent of the demanding State "any person . . . who has fled from justice and is found in this State." (p. 14 *supra*). Section 3 of the Act states that the demand must be in writing, and ordinarily must allege that the accused was in the demanding state at the time of the crime. Furthermore, the demand must be accompanied by an indictment (or information or affidavit made before a magistrate) that substantially charges the accused with a crime under state law and which has been authenticated by an executive authority of the demanding state (p. 15 *supra*). Section 4 provides that the executive in the asylum state may, at his discretion, make an independent investigation of the circumstances underlying the request for extradition (p. 15-16 *supra*). When the executive determines that the demand will be honored he

5. The Extradition Act has been adopted by all the states except South Carolina. 11 U. L. A. p. 10 (1980 Supp.)

signs an arrest warrant as provided in Section 7 of the Act (p. 17 *supra*). Section 10 of the Extradition Act provides that after the accused has been arrested but before he may be turned over to the authorities of the requesting state, he must be taken before a judge in the asylum state and informed of (1) the demand which has been made for his surrender; (2) the crime with which he is charged; and (3) the right to demand and procure legal counsel. If the accused indicates that he wants to test the legality of his arrest, the judge must set a reasonable time within which he may challenge the extradition by writ of habeas corpus (p. 18, *supra*).[6]

While the Extradition Act is designed to govern the extradition of all fugitives in the asylum state (Section 2), the Act also specifically provides for the transfer of a person already imprisoned in the asylum state. Section 5 of the Extradition Act empowers the Governor of Pennsylvania to agree with the executive of the asylum state for the extradition of a prisoner before the conclusion of criminal proceedings or his term of sentence in the asylum state, upon condition that such person be returned to the asylum state as soon as prosecution in Pennsylvania is completed (p. 16 *supra*). Extradition of a prisoner is not mandatory,

---

6. At a hearing on a writ of habeas corpus, the court may not inquire into the guilt or innocence of the accused (Sec. 20, Pet. A41a). In fact, this Court in *Michigan v. Doran*, — U.S. —, 99 S. Ct. 530, 535 (1978), held that the scope of review in a habeas corpus hearing challenging extradition is limited in the following fashion:

> Once the governor has granted extradition, a court considering release on habeas corpus can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive.

however, since Section 19 provides that the executive of the asylum state has the discretion to keep custody of a prisoner until he has been tried, convicted and discharged from prison (p. 23 *supra*).

The absence of a mechanism specifically designed to efficiently transfer prisoners under the Extradition Act prevented many prisoners from being expeditiously tried on outstanding charges in other states. The problems which untried detainers[7] of long duration caused both the inmate and those charged with his rehabilitation are well documented by the Court of Appeals for the Second Circuit:

> The Detainers Act was originally drafted in response to a variety of problems arising out of the then unregulated system of detainers commonly used where one or more jurisdictions had charges outstanding against a prisoner held by another jurisdiction.
>
> . . .
>
> . . . Prison authorities often accorded detainers considerable weight in making decisions with respect to the terms and conditions of the prisoner's incarceration and release on parole. Sometimes the prisoner would automatically be held under maximum security. Sometimes he would be ineligible for special work programs, athletic programs, release for visits to relatives'

7. In R. Singer and W. Statsky, *Rights of the Imprisoned*, 825 (1974), the authors note that there are three kinds of detainers:

> (1) [T]hose which reflect an unresolved criminal charge against the prisoner; (2) those which reflect that, prior to his incarceration, the prisoner had been sentenced for another crime which has yet to be served; (3) probation or parole "warrants," seeking to resolve the question of whether such conditional liberty as the prisoner had prior to this present criminal charge should be revoked.

The Agreement applies only to the first class of detainers.

> death beds or funerals, or special minimum security facilities. Often detainers precluded the granting of parole. Despite these serious consequences, virtually any law enforcement officer—prosecutor, policeman, or judge—could file a detainer without any procedural prerequisites. No pending indictment or other formal notification of charges was generally required.
>
> . . .
>
> Thus detainers imposed major unjustifiable hardships on prisoners, and, prior to adoption of the Agreement on Detainers, there was nothing a prisoner could do about them.
>
> . . .
>
> Instead of permitting coordination of sentencing and rehabilitation, the old detainer system often inhibited fair sentencing and effective rehabilitation.
>
> . . .
>
> The system also tended to eliminate the possibility of concurrent sentencing, even when the charges in the various jurisdictions all stemmed out of the same criminal episode or occurred within a short period of time.

United States v. Ford, 550 F.2d 732, 737-40 (2d Cir. 1977) *aff'd sub nom. United States v. Mauro*, — U.S. —; 98 S. Ct. 1834 (1978).

To remedy some of these problems, Pennsylvania enacted the Interstate Agreement on Detainers in 1959.[8] In *United States v. Mauro, supra*, at 1841-42, this Court traced the origin of the Agreement and pointed to language in Article I for the policy considerations which

8. The Interstate Agreement on Detainers has been adopted by forty-eight states, the United States and the District of Columbia. 11 U. L. A. p. 68 (1980 Supp.)

motivated this legislation and the purposes which it was designed to accomplish. Article I provides:

> The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedure. It is the further purpose of this agreement to provide such cooperative procedures.

To achieve the goals enunciated in this policy statement, the drafters of the Agreement set out specific and detailed procedures to be followed by prisoners, correctional staff and prosecutors when a detainer was lodged against an inmate. Either the inmate (Article III) or the prosecutor (Article IV) may initiate the procedures which culminate in the prompt trial of open charges.

Article III of the Agreement confers significant rights upon a prisoner who has a detainer lodged against him: (1) he must be notified of the source and content of such a detainer (Sec. (c), p. 5 *supra*); (2) he must be informed of his right to make a request for final disposition of the indictment, information or complaint upon which the detainer is based *Id;* (3) if the prisoner requests final disposition, he must be brought to trial within one hundred eighty

(180) days after his written request, and such a request operates as a demand for final disposition of *all* untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner by the receiving state (Sec. (a) & (d), p. 4-6 *supra*); (4) failure of the authorities in the receiving state to begin trial within one hundred eighty (180) days, unless excused for good cause, results in the dismissal of *all* untried charges (Sec. (d), p. 6 *supra*); (5) the request for final disposition of charges upon which a detainer is based is deemed to be a waiver of all extradition proceedings as to all untried charges and as to any sentence that is imposed on the prisoner in the receiving state, and that must be served after completion of his sentence in the sending state (Sec. (e), *Id.*).

Article IV of the Agreement specifies the procedure to be followed when a prosecutor in the receiving state who has lodged a detainer against a prisoner in another state wishes to secure a prisoner's presence for trial. In order to perfect such an interstate transfer, the Agreement provides: (1) the prosecutor must present to the appropriate authorities in the sending state a written request for temporary custody, which request must have been "approved, recorded and transmitted" by the trial court in the receiving state (Sec. (a), p. 7 *supra*); (2) a mandatory thirty (30) day waiting period must elapse following the request for temporary custody during which "the governor of the sending state may disapprove the request . . . either on his own motion or upon motion of the prisoner." (*Id.*); (3) if the prisoner is transferred to the receiving state, trial must begin within one hundred twenty (120) days after the date of transfer, unless a continuance is granted for good cause, on *all* charges which had been the subject of detainers from the receiving state, otherwise the receiving court is authorized to dismiss all untried charges (Sec. (c) & (e), p. 8 *supra*).

ARGUMENT

I. The Court of Appeals for the Third Circuit erred in the statutory construction of Article IV of the Interstate Agreement on Detainers when it held that prisoners transferred from one state to another for trial on criminal charges must be given a hearing as provided in the Uniform Extradition Act.

A. *The Court of Appeals' interpretation of Article IV goes against the clear and literal meaning of the statute*

This case presented the Court of Appeals for the Third Circuit with the issue of whether a prisoner who is transferred between states under the Agreement is entitled to the pre-transfer procedural protections available to a person arrested and extradited under the Extradition Act. The Court of Appeals for the Third Circuit held that prisoners may be transferred under Article IV of the Agreement only after being given the opportunity for a hearing as provided in the Extradition Act, Section 10 (Pet. A13a). The holding was based on the statutory construction of the Agreement rather than on the constitutional arguments urged by respondent.

In reaching its conclusion the Court of Appeals examined the language of Article IV(d) of the Agreement and found that it implied Extradition Act procedures. Article IV(d) reads:

> *Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof,* but such delivery may not be opposed or denied on the ground that the executive

> authority of the sending state has not affirmatively consented to or ordered such delivery. (emphasis supplied)

Read literally, Article IV(d) means that a prisoner has only the rights afforded by Article IV(a), that is, the right to petition the governor. The only two other courts that have interpreted Article IV(d) of the Agreement have applied this reading.

In analyzing precisely the same issue of statutory construction presented here, the Court of Appeals for the Fifth Circuit focused on Article IV(a) and (d) and concluded that the language of these two paragraphs did not imply that a pre-transfer hearing was required. *Atkinson v. Hanberry,* 589 F.2d 917, 919 (5th Cir. 1979). A New Jersey intermediate appellate court in *State v. Thompson,* 133 N.J. Super. 180 at 185, 336 A.2d 11 (1975) adopted the same interpretation, stating:

> We construe the phrase "to contest the legality of his delivery as provided in paragraph (a) hereof" to mean that within thirty (30) days after receipt by the appropriate authority in the sending state of the written request by the receiving state for temporary custody of the prisoner, the prisoner may move before the Governor of the sending state to disapprove the request.

This interpretation of Article IV(d) is persuasive because it gives meaning to the clear words of the drafters. The reading by the Court of Appeals for the Third Circuit excises the clause "as provided in paragraph (a) hereof . . ." in clear contradiction of its avowal to follow the teachings of the Court in *Montclair v. Ramsdell,* 107

U.S. 147, 152 (1882) and "give effect, if possible, to every clause and word in a statute" (Pet. A9a). Article IV(a) contains nothing to which this clause could refer other than the right to request the sending governor to disapprove the request.

To avoid the apparent meaning of Article IV(d), the Court of Appeals followed several lines of reasoning. The Court pointed to language in Article III(e) to the effect that the prisoner who requests a transfer waives extradition, and stated that "[T]he Extradition Act remained in effect after adoption of the Agreement, but when a prisoner chooses to claim the benefits of Article III, he must give up the procedural safeguards of the Extradition Act" (Pet. A7a).[9] The Court reasoned that because Article IV contains no waiver of extradition language, all of the rights provided by the Extradition Act are made applicable under the Agreement by Article IV(d) (except for the affirmative consent of the sending governor) (Pet. A7a). The logic of this rationale is flawed by a basis misconception: Article III(e) speaks of *extradition*, not of Ex-

---

9. Article III(e) of the Agreement provides:

> Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purpose of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

tradition Act procedures. In *Terlinden v. Ames*, 184 U.S. 270 (1902) the Court stated at page 289:

> Extradition may be sufficiently defined to be the surrender by one nation to another of an individual accused or convicted of an offense outside of its own territory, and within the territorial jurisdiction of the other, which, being competent to try and to punish him, demands his surrender.

It should be obvious that the use of the term *extradition* in the Agreement does not imply the operation of Extradition Act procedures. Rather, the Agreement itself specifies the procedure to contest the prisoner's delivery, *i.e.* a petition to the governor.

Similarly, the Court of Appeals' reliance on the explanatory note on the Agreement in the Council of State Governments, *Suggested State Legislation, Program for 1957*, 78-79 (1956), is based on the assumption that the term "extradition" means the panoply of procedural rights provided in the Extradition Act. The explanatory note does not bolster this assumption since it does not define *extradition* in this way. What the explanatory note does is to explain how Article IV(a) and (d) together protect whatever extradition rights the prisoner has without reading into the Agreement provisions from other statutes. If the drafters of the Agreement wished to superimpose Extradition Act procedures on the Agreement, they could have done so by one simple reference to that effect.

A review of the Agreement materials in the handbook prepared by the Council of State Governments nowhere suggests that a prisoner transferred under the Agreement is entitled to formal extradition proceedings, despite the

fact that detailed instructions for the implementation of the Agreement are provided for the benefit of prosecutors and wardens. See Council of State Governments, *The Handbook on Interstate Crime Control,* 91-116 (rev. ed. 1966).

Furthermore, an examination of the explicit procedural directions contained in the Agreement, as well as the specific directions which accompany the forms used by the states to implement the provisions of the Agreement,[10] strongly militate against the assumption that Extradition Act proceedings were intended but never specifically mentioned by the drafters of the Agreement. The Agreement is detailed and explicit. It was intended to be complete on its face. Under these circumstances, the Court of Appeals' inclusion of procedures under the Extradition Act is unreasonable.

B. *The Court of Appeals' reliance on Legislative history is misplaced since the statutory language is unambiguous and its literal interpretation effectuates the purpose of the statute*

General rules of statutory construction dictate that generally there are two circumstances when a court may look beyond the express language of the statute: (1) where the statutory language is ambiguous, and (2) where a literal interpretation would defeat the purpose of the statutory scheme or lead to an absurd result. *United States*

10. Both New Jersey and Pennsylvania have adopted the rules, regulations and forms drafted by the Council of State Governments to implement the provisions of the Agreement. These appear on p. 100-114 of the Council's *Handbook on Interstate Crime Control, supra.*

v. Oregon, 366 U.S. 643, 648 (1961); *United States v. Public Utilities Commission of California*, 345 U.S. 295, 315 (1953); *United States v. American Trucking Associations, Inc.*, 310 U.S. 534, 543-44 (1940). Neither of these circumstances is present here; the words of the Agreement are unequivocal and the literal interpretation intended by the legislature furthers the basic purpose of the Agreement which is "to encourage the expeditious and orderly disposition of charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints." Art. I, p. 3 *supra*.

An understanding of the role the Agreement is intended to play in the administration of justice in America can be gleaned from the following passage from a recent opinion of this Court:

> Prior to the Agreement, there were several means by which States could obtain prisoners from other jurisdictions, none of which was entirely satisfactory. The traditional method was the use of formal extradition proceedings. This required a request for the prisoner by the Governor to the receiving State. It was sent to the Governor of the State that had custody of the prisoner, and he was permitted to investigate the situation to determine if the prisoner should be surrendered. If the Governor agreed to the extradition, he issued an arrest warrant against the prisoner, who was then permitted to challenge the legality of his arrest.
>
> Rather than going through this formal procedure some States entered into special contracts controlling the transfer of prisoners. The effort involved in arriving at such a contract, however, was often thought to outweigh the benefit of the simplified procedures unless there were frequent prisoner transfers between two States.

> Because of problems with both of these methods, law enforcement authorities developed the informal practice of filing detainers against the prisoners; rather than seeking immediate transfer, the State would merely notify the State having custody of the prisoner that he was wanted at the completion of his sentence. This practice led to various problems, discussed in the text and n.25, *infra,* that the Agreement sought to overcome. The Agreement also provided States with a simple and efficient means of obtaining prisoners from other States. *United States v. Mauro,* 98 S.Ct. 1834; at 1844 n.23 (1978).

The decision of the Court of Appeals here defeats one of the basic purposes of the Agreement by superimposing the cumbersome Extradition Act proceedings on the simplified procedures of the Agreement.[11]

C. *The Court of Appeals erroneously relied on the provisions of a general statute to defeat the controlling provisions of a specific statute*

In the context of Pennsylvania's statutory scheme, the Extradition Act is a general statute which authorizes the state to extradite "any person," (Section 2) providing, however, that in the case of incarcerated individuals (Section 5) an agreement could be consummated by the executive

---

11. Section 5 of the Extradition Act empowers the executive authority of the state "to agree" with the other states for the transfer of prisoners who are serving a sentence in the asylum state. The Interstate Agreement on Detainers is a special contract and directly in response to the authorization contained in this section. Section 5 does not specify what form the Agreement should take, neither does it detail what procedural safeguards should be included. Therefore, rather than superimposing Extradition Act procedures on the Agreement, the more reasonable construction of the two statutes would be that the Agreement is the means of transfer envisioned by Section five of the Extradition Act.

authority of the state to provide for the extradition of prisoners. The Agreement, enacted in Pennsylvania eighteen years later, focuses on prisoners and specifically provides a simpler procedure for the disposition of outstanding detainers based on untried indictments, informations or complaints.

Courts have long relied on the principle of statutory construction which "gives precedence to the terms of the more specific statute where a general statute and a specific statute speak to the same concern, even if the general provision was enacted later." *Simpson v. United States*, 435 U.S. 6, 15, (1978). The general language of a statute "will not be held to apply to a matter specifically dealt with in another part of the same enactment . . . Specific terms prevail over the general in the same or another statute which might otherwise be controlling." *Ginsberg & Sons v. Popkin*, 285 U.S. 204, 208 (1932). In *Preiser v. Rodriguez*, 411 U.S. 475 (1973), this Court held that habeas corpus provides the exclusive federal remedy for prisoners attacking the fact or duration of their confinement. Consequently, it did not permit a Section 1983 attack in an action in which habeas corpus would lie. The Court concluded that despite the broad language and general applicability of Section 1983, a prisoner challenging his underlying conviction must seek relief from the more specifically applicable federal habeas corpus statute. Guided by these principles, the Court must conclude that although the Extradition Act's broad reach once embraced the respondent here, the specific terms of the Agreement now control the interstate transfer of prisoners who have detainers lodged against them.

D. *The effects of the decision of the Court of Appeals are clearly contrary to the purpose of both the Extradition Act and the Agreement*

The central provisions of the Agreement are found in Articles III and IV. The decision of the Third Circuit in this case has radically changed the character and impact of Article IV, by grafting unto it procedural requirements which were never contemplated by the drafters and which produce some anomalous results when applied.

The statutory scheme which results from the interaction of the Extradition Act and the Agreement as construed by the Third Circuit grants greater procedural safeguards to an incarcerated prisoner than to a free individual when each is sought for trial in another state. A member of the public who is sought for trial under the Extradition Act first learns of this fact when he is arrested on a governor's warrant, and he does not have the opportunity to petition the governor of the asylum state to oppose his extradition. Neither does he have the advantage of having *all* outstanding charges in the receiving state tried within 120 days. On the other hand, the prisoner learns of the charges outstanding against him when a detainer is first lodged, and when a request for temporary custody is made he has thirty days to petition the governor to disapprove the request.

The Agreement policy of swift disposition of detainers is subverted by the decision of the Third Circuit. Before a prisoner can be brought before a court of record for an extradition type hearing, the thirty day period provided in the Agreement must elapse since it is not until this period of time has elapsed that it is known whether or not the governor of the asylum state will, *sua sponte*, disapprove

the request and therefore eliminate the need for any hearing at all. The thirty day period under the Agreement, plus the time required to bring the inmates before a court of record, plus the "reasonable time" which the Extradition Act grants an individual to apply for a writ of habeas corpus operate to cause the type of delays which the Agreement was designed to avoid.

Simply stated, the effect of this decision is that while a free citizen sought for extradition is entitled only to the procedural protections of the Extradition Act, a prisoner who has a detainer lodged against him enjoys the procedural safeguards under both statutes. The Agreement was designed to solve problems created for the prisoner and society by the abuses which outstanding detainers of long duration caused. It provides a simple, expeditious procedure which gives prisoners greater benefits than under the Extradition Act. The decision of the Court of Appeals violates the clear intent of the Agreement and defeats its purpose by encumbering it with the procedural require,-ments of another statute.

II. The interstate transfer of a sentenced prisoner pursuant to the provisions of the Interstate Agreement on Detainers does not infringe upon any interest protected by the due process clause of the Fourteenth Amendment.

Respondent challenges his interstate transfer alleging that his Fourteenth Amendment rights were violated because the Agreement which authorized the transfer did not require notification to him of his right to petition the governor to disapprove the transfer and did not require a pre-

transfer hearing.[12] The issue presented by respondent's claim is whether he had any rights protected by the Fourteenth Amendment. The Court of Appeals did not reach this issue.

A. *Respondent does not have any constitutionally protected extradition rights*

Respondent appears to claim that he has constitutional rights which attach to extradition, and that these rights include the procedures of the Extradition Act. The Extradition Act under which respondent asserts his rights details procedures to be applied when extradition is sought. However, such rights are statutory creations and not constitutionally based.

The constitutional provision for extradition is a right granted to the state, not to the fugitive. In *Lascelles v. Georgia,* 148 U.S. 537, 542 (1893) the Supreme Court said:

> The sole object of the provision of the Constitution [Article IV, Sec. 2] and the act of Congress to carry it into effect is to secure the surrender of persons accused of crime, who have fled from the justice of a State, whose laws they are charged with violating. Neither the Constitution, nor the act of Congress providing for the rendition of fugitives upon proper requisition being made, confers, either expressly or by

12. From I set forth at p. 101 of the *Handbook,* n. 10 *supra,* is given to the inmate when a detainer on an untried indictment, information or complaint is lodged. It advises him of the source of the detainer, specifies the charges and recites his right to initiate final disposition procedures under Article III. At this time, he is also advised that the prosecutor may request temporary custody to try him on the charges and that he has a right to petition the governor to disapprove such a request.

The record in this case does not disclose when the detainer was first lodged against respondent.

> implication, any right or privilege upon such fugitives . . . [or] exemption from trial for any criminal act done therein.

Whatever benefits respondent may be entitled to under the Extradition Act, denial of such benefits does not deprive him of any federally protected right. *Frisbie v. Collins, supra; Pettibone v. Nichols,* 203 U.S. 192 (1906); *Munsey v. Clough,* 196 U.S. 364 (1905). In *Frisbie,* the Supreme Court stated:

> [D]ue process is satisfied when one present in court is convicted of crime after having been fairly apprised of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will. At 522.

In *Ponzi v. Fessenden,* 258 U.S. 254, 260 (1922), the Court held that the extradition process is a right of the sovereign state; therefore, the state may by statute assert its right to protect its own citizens from unjust criminal actions that may be brought by another state.

It is apparent, therefore, that respondent has no constitutionally protected extradition rights, and that any extradition rights which he has must be statutorily based.

B. *The Interstate transfer of a prisoner does not infringe a "liberty" interest protected by the due process clause*

In *Meachum v. Fano, supra;* and *Montanye v. Haymes,* 427 U.S. 236 (1976), the Court examined the question of whether a hearing was constitutionally required prior to

the transfer of inmates from one prison to another within the state. Beginning its analysis by asking whether a liberty interest within the meaning of the Due Process Clause was implicated in such a transfer, the Court stated in *Meachum:*

> We reject at the outset the notion that any grievous loss visited upon a person by the State is sufficient to invoke the procedural protections of the Due Process Clause. *Id.* 223
>
> * * *
>
> Similarly, we cannot agree that any change in the conditions of confinement having a substantial adverse impact on the prisoner involved is sufficient to invoke the protections of the Due Process Clause. *Id.*

The Court concluded that a convicted prisoner's liberty interest has been "sufficiently extinguished" to permit a state to confine him in any of its institutions and to transfer him from one institution to another within the prison system. *Id.* 224-25. Therefore, the Court held that no liberty interest of a convicted inmate is infringed when he is transferred from one prison to another within the state without a hearing, absent some right or justifiable expectation rooted in state law that he will not be transferred except for misbehavior or upon the occurrence of specified events. *Id.* 224-228. The Court looked for the existence of any state-created liberty interest which might be violated by the transfer from a medium security prison to a maximum security prison in Massachusetts but found that state law did not confer any right to the prisoner to remain in any particular prison. *Id.* at 226-227.

Although in *Meachum* and *Montanye, supra,* the Court dealt with intrastate transfers, the holding in these cases is equally applicable to interstate transfers since it is the na-

ture of the interest rather than its weight which determines whether the due process clause is implicated. The nature of a prisoner's liberty interest does not change simply because he crosses a state's boundary. Two circuit courts of appeals have followed this reasoning. In *Sisbarro v. Warden, Massachusetts State Penitentiary,* 592 F.2d 1 (1st Cir. 1979) the Court of Appeals for the First Circuit relied on the "liberty" interest analysis of *Meachum* and *Montanye, supra,* and concluded that since "the burden of disadvantage to the prisoner is no longer the test, there is no distinction between interstate and intrastate transfers." at p. 3. Turning to the law of the state in which the prisoner was initially confined, the Court of Appeals found no right or expectation that he would not be transferred.[13] The Court of Appeals therefore held that the prisoner's due process rights were not implicated. The Court of Appeals for the Fifth Circuit has also considered the applicability of the *Meachum* holding, *supra,* to the interstate transfer[14] of prisoners and stated:

> We think this holding applies to a federal prisoner seeking protection under the Due Process Clause of the Fifth Amendment. The hardships that Atkinson claims he will suffer by reason of his transfer to Ohio —absence and possible loss of his job at Atlanta Peni-

13. The prisoner transfer here was made from Massachusetts to Connecticut pursuant to the New England Interstate Corrections Compact, M.G.L. c. 125, App. Secs. 1-1-1-3. The purpose of the compact was "the mutual development and execution of . . . programs for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources." *Sisbarro* at 3.

14. The transfer from the United States Penitentiary in Georgia to the State of Ohio was made pursuant to the Agreement, to which both the United States and Ohio are signatories. 18 U.S.C.A. App. (1976); and R.C. Secs. 2963.30 *et seq.*

> tentiary—is no greater than that suffered by the state prisoners in *Meachum* and *Montanye*. Moreover, just as the state prisoners in those cases had no substantial expectation that they would not be transferred, here no federal law creates a right or expectation for a federal prisoner to avoid transfer to state authorities to stand trial on state charges. *Atkinson v. Hanberry*, 589 F.2d 917, 920 (1979).

Similarly, in the case before this Court respondent can point to no right or expectation rooted in state law which would permit him to avoid transfer to another state. On the contrary, the provisions of both the Extradition Act and the Agreement create the expectation that such a transfer could be initiated by the state (Extradition Act Section 5; Agreement, Article IV).

The Court should follow *Meachum*, *Sisbarro* and *Atkinson*, *supra*, and hold that the Fourteenth Amendment does not require a pre-transfer hearing when a prisoner is transferred from one state to another.

III. The interstate transfer of a sentenced prisoner pursuant to the provisions of the Interstate Agreement on Detainers rather than the Uniform Criminal Extradition Act does not violate the equal protection clause of the Fourteenth Amendment.

Respondent complains that he has been deprived of the equal protection of the law because by being transferred under the Agreement he is deprived of the procedural protections afforded to those individuals who are extradited pursuant to the Extradition Act (A15a). Respondent goes on to state that all prison authorities in

Pennsylvania transfer prisoners under the Agreement ignoring the rights provided under the Extradition Act (A16a, par. 15, 16; 19a, par. 24; 30a, par. 9). The Court of Appeals did not deal with this issue.

A. *The protection of procedural rights are substantially similar under both the Extradition Act and the Agreement*

The Extradition Act is primarily designed for the extradition of persons at large in the asylum state while the Agreement is specifically intended for the interstate transfer of convicted and incarcerated prisoners who have detainers lodged against them. A detailed comparison of the procedural protection afforded under the Extradition Act and the Agreement was set forth by the Court in *Commonwealth ex rel. Coleman v. Cuyler*, 396 A.2d 394, 401 (1978):

> Although the procedure for extraditing a person is not identical under the Detainers Agreement and the Extradition Act, the two acts provide substantially the same protections. The Extradition Act requires that a person to be extradited from Pennsylvania to any other state be taken before a Pennsylvania court of record, where the person must be informed of the demand for his surrender, the crime with which he is charged in the demanding state, and the right "to demand and procure legal counsel." The Act does not require that the person be informed of anything prior to being taken before the court. On the other hand, the Detainers Agreement provides that the appropriate court of the demanding state must approve the written request for the prisoner's surrender, and

must submit the request to the appropriate Pennsylvania authorities, who are required by the Agreement to notify the prisoner of the source and contents of the detainer and of the prisoner's right to demand a speedy disposition of the charges. An automatic thirty day waiting period then goes into effect, during which time the prisoner may not be surrendered to the demanding state. Although the Extradition Act requires the person's appearance in court, it does not provide him with the right to counsel at that time, and if the person does not speak up to challenge his extradition in some way (for example, to say that he is not the person named in the demand for extradition), then he will promptly be delivered to the demanding state without a further hearing. If the prisoner indicates that he desires to challenge the proceedings, he will be given "a reasonable time" in which to apply for a writ of habeas corpus, although the Act does not require specific notice of the availability of the writ. Overall, it can hardly be said that the Extradition Act provides greater protection for a prisoner than does the Detainers Agreement. Although procedure is different under the two acts, the protection of the prisoner's rights are substantially similar; we therefore find no equal protection violation in the application of the Detainers Agreement as compared to the Extradition Act.

Similarly, in *Wertheimer v. State,* 294 Minn. 293, 201 N.W.2d 383 (1972), the Court found a difference in the procedure under the two statutes but did not find the difference so "fundamentally unfair" as to deprive the prisoners of equal protection and due process. At 386.

B. ***Differences in the procedure under the Extradition Act and the Agreement are rationally based***

In determining whether a statutory scheme offends the Equal Protection Clause the standard of inquiry is whether the laws being attacked are rationally based and free from invidious discrimination. *Hagans v. Lavine,* 415 U.S. 528, 538 (1974). The record in this case indicates that all inmates in Pennsylvania are being transferred pursuant to the provisions of the Agreement, therefore, the only classes being created by the interaction of the two statutes in question are prisoners and individuals at large. In *Wertheimer, supra,* a prisoner who was transferred pursuant to the Agreement contended that the state had refused him a pre-transfer hearing under the Extradition Act because of his status as a prisoner and therefore violated his rights to equal protection and due process. The court, in commenting on the different extradition procedure which Minnesota has formulated for its prisoners and its ordinary citizens stated:

> We cannot agree that such a classification is per se arbitrary and unreasonable. A prisoner is in a situation completely different from that of the ordinary citizen whose freedom is unrestricted. By being called upon to defend against a charge in another jurisdiction, a prisoner suffers no additional restriction on his freedom; he continues to gain credit for time served while in the temporary custody of the foreign jurisdiction. The average citizen, however, faces a far different situation. His freedom of movement . . . is brought to an end. He is removed from his community, family, friends, and job under conditions which may permanently cloud his reputation, and as such, his need for protection from extradition on spurious

charges is far greater than that of the prisoner, at 385-386.

On the basis on this analysis the court concluded that there was no denial of equal protection.

In *Hystad v. Rhay,* 12 Wash. App. 872, 533 P.2d 409 (1975), plaintiff complained that the arbitrary decision of state officials in transferring prisoners pursuant to the Agreement as opposed to the Extradition Act resulted in according prisoners different procedural rights. The court examined the legislative purpose for the two statutes and determined that one applied to the general public and one to prisoners. Finding that the procedural distinctions in the statutes do have relevance to their purpose, the court held that legislative classifications "do not offend the equal protection clause because of some inequalities which may arise as a result of their practical application," at 415.

Every state court which has analyzed the equal protection claim in the context presented by this record has held (1) that the procedural safeguards under the two statutes are substantially similar and hence not violative of equal protection,[15] (2) that the difference in procedure used for the transfer of prisoners versus that used for a free individual is rationally based;[16] or (3) both.[17]

Those jurisdictions which have found an equal protection violation in the context of interstate prisoner transfer under the Agreement are distinguishable because in each case the two classes they analyzed were composed

15. *Commonwealth ex rel. Coleman v. Cuyler,* 396 A.2d 394, 401 (1978); *Hystad v. Rhay,* 12 Wash. App. 872, 533 P.2d 409, 416 (1975).

16. *State v. Thompson,* 133 N.J. Super. 180, 187, 336 A.2d 11 (1975).

17. *Wertheimer v. State,* 294 Minn. 293, 201 N.W.2d 383, 386 (1972).

of (1) those prisoners transferred under the Extradition Act and (2) those prisoners transferred under the Agreement.[18] Here, the record is clear that the two classes being treated in a different fashion are (1) all prisoners on one hand and (2) the general public on the other.

In assessing the validity of the classification created by the Agreement, the basic purpose for its adoption and enactment must be emphasized. The state has an intense interest in both the rehabilitation of its prison population and the efficient administration of its criminal justice system. To accomplish these ends, the legislature enacted the Agreement.

The resulting differences in treatment of the prisoner class as opposed to the general public are grounded on reasonable bases. The Court should therefore hold that any differences in treatment afforded to prisoners as opposed to members of the general public are rationally based and therefore not offensive to the Equal Protection Clause.

---

18. In *McQueen v. Wyrick*, 543 S.W.2d 778 (1976); *Moen v. Wilson*, 189 Colo. 85, 536 P.2d 1129 (1975); and *State ex rel. Garner v. Gray*, 55 Wis.2d 574, 201 N.W.2d 163 (1972); the Supreme Courts of Missouri, Colorado and Wisconsin found a denial of equal protection because the record reflected that the state could and did arbitrarily decide whether to transfer a prisoner under the Extradition Act or the Agreement, the inequality therefore arose in treating prisoners in dissimilar fashion.

The decision of this Court in *Mauro, supra*, has established as law that once a detainer has been lodged against a prisoner, by a state party to the Agreement, any transfer of that prisoner for the purposes of trial on the underlying charges triggers the procedural protection of the Agreement. Therefore, the arbitrary choice of statute which has been ascribed to state officials in these cases is no longer possible.

CONCLUSION

On the basis of the foregoing arguments and authorities, petitioners respectfully suggest that the decision of the Court of Appeals be reversed and judgment entered in favor of petitioners.

Respectfully submitted,

/s/ Maria Parisi Vickers
MARIA PARISI VICKERS,
Deputy Attorney General,
Chief, Civil Litigation

/s/ John O. J. Shellenberger
JOHN O. J. SHELLENBERGER,
Deputy Attorney General,
Eastern Regional Director

/s/ Edward G. Biester, Jr.
EDWARD G. BIESTER, JR.,
Attorney General

Pennsylvania Department of Justice,
206 State Office Building,
Philadelphia, Pennsylvania 19130
(215) 238-6661